

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

CASE NO. C12-1282JLR

Plaintiff,

V.

CITY OF SEATTLE.

ORDER REGARDING ACCOUNTABILITY ORDINANCE

Defendant.

Before the court are (1) the City of Seattle's ("the City") July 28, 2017, letter

(Letter (Dkt. # 408)) and (2) its supplemental brief concerning the Seattle Police

Department (“SPD”) accountability ordinance (“Ordinance”) (Supp. Br. (Dkt. # 412)). In

its letter, the City requests that the court give expedited review to two portions of the

Ordinance governing the selection and appointment of the Director of the Office of

Police Accountability (“OPA”) and the Inspector General for Public Safety (“IG”).

(Letter at 1; *see* Ordinance (Dkt. # 396-1) at 24 (§ 3.29.115(A)-(B)), 48 (§ 3.29.230(A)-

(B)).) In its supplemental brief, the City renews its broader request for a ruling “that the

1 Ordinance, as enacted, is consistent with the Consent Decree, that the City may continue
2 to implement the Ordinance, including meeting its bargaining obligations, and that the
3 City must return to the Court for review of any changes to the provisions of the
4 Ordinance and their impact on the accountability system as a whole” following the
5 collective bargaining process. (Supp. Br. at 9-10.) Plaintiff United States of America
6 (“the Government”) does not oppose either request. (See Letter at 1 (“The [Government]
7 has consented to this request.”); *see also* Br. on Account. Ordinance (Dkt. # 396) at 25.)

8 At the hearing, the court expressed concern that the collective bargaining process
9 was essentially a “black hole” whose impact on the Ordinance and the SPD
10 accountability system could not be predicted. (See July 18, 2017, Status Conf. Transcript
11 (“Tr.”) (Dkt. # 407) at 21-22.) In order to reassure the court concerning the collective
12 bargaining process, the City agreed to provide: (1) a list of the Ordinance’s provisions
13 that the City intends to submit to collective bargaining prior to implementation (Dkt.
14 # 412-1), and (2) a list of the Ordinance’s provisions that are unchanged from the draft
15 legislation, previously reviewed and approved by the court, and that do not require
16 collective bargaining (Dkt. # 412-2). (See Tr. at 13; Letter at 1.) The court has reviewed
17 those lists but is not reassured. In particular, despite the lists, the City acknowledges that
18 “no provision of the Ordinance is categorically exempt from bargaining” and the relevant
19 unions may disagree with the City’s assessment concerning which provisions of the
20 Ordinance are subject to collective bargaining. (Letter at 2; Supp. Br. at 4 (noting that
21 the City’s assessments as to which provisions of the Ordinance are mandatory subjects of
22

1 collective bargaining “are subject to disputes by the unions impacted by the Ordinance,
2 disputes that will be addressed in the first instance in forums other than this Court.”.).

3 For the same reasons expressed at the July 18, 2017, status conference, the court
4 declines to rule on the entirety of the Ordinance as it relates to the SPD accountability
5 system at this time. (See Tr. at 8-9, 21-22.) Until the collective bargaining process is
6 complete, the court cannot be assured that the Ordinance, as it stands today, is a final
7 product. The court declines to rule on a variant of the Ordinance, but will await the final
8 version that is ultimately implemented following collective bargaining.

9 In withholding its approval, the court is not suggesting that the City should not
10 implement those portions of the Ordinance that the City understood would take effect 30
11 days after the Mayor signed the Ordinance (see Supp. Br. at 3), or that the City should
12 refrain from entering into collective bargaining concerning those aspects of the
13 Ordinance that require it (see *id.* at 9 (suggesting that court approval is necessary for the
14 City to engage in collective bargaining over the Ordinance)). The court simply declines
15 to place its final imprimatur on what is essentially a work-in-progress. The court
16 cautions the parties who either are or will be engaged in collective bargaining over
17 provisions of the Ordinance that the United States Constitution and the right of the City’s
18 citizens to have constitutional policing ultimately trumps all other concerns at issue here.

19 The court, however, is not without some flexibility in providing the parties with
20 guidance. In its July 28, 2017, letter, the City asks more narrowly for the court to
21 provisionally approve just two portions of the Ordinance related to the selection and
22 appointment of the OPA Director and the IG. (See Letter at 1 (citing §§ 3.29.115(A)-(B),

1 3.29.230(A)-(B)).) The City states that the OPA Director and IG “are vital to the City’s
2 implementation of the remainder of the Ordinance, and the national selection process for
3 each position will take months.” (*Id.*) The court does not wish to impede those selection
4 processes. Thus, to the extent that the City believes the court’s approval is necessary
5 before it can engage in those selection processes, the court grants that approval. Indeed,
6 the court is willing to review other specific provisions of the Ordinance in the future
7 should the parties believe such review is necessary to keep the reform process moving
8 forward. The court’s approval of sections 3.29.115(A)-(B) and 3.29.230(A)-(B)) of the
9 Ordinance, however, is conditional. If these provisions change in any way, as a result of
10 the collective bargaining process or otherwise, the parties must so inform the court and
11 resubmit the provisions to the court for further review.

12 **IT IS SO ORDERED.**

13 Dated this 7th day of September, 2017.

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17 JAMES L. ROBART
18 United States District Judge
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